



Agenda Date: 2/22/06

Agenda Item: 2A

## **STATE OF NEW JERSEY**

**Board of Public Utilities**

**Two Gateway Center**

**Newark, NJ 07102**

**[www.bpu.state.nj.us](http://www.bpu.state.nj.us)**

### ENERGY

IN THE MATTER OF THE APPLICATION OF  
BOROUGH OF BUTLER ELECTRIC UTILITY  
FOR AN ORDER APPROVING A LEVELIZED  
ENERGY ADJUSTMENT CLAUSE ("LEAC")  
FOR APRIL 1, 2005 TO MARCH 31, 2006

ORDER ADOPTING  
STIPULATION

DOCKET NO. ER05020116

(SERVICE LIST ATTACHED)

BY THE BOARD<sup>1</sup>:

The Borough of Butler Electric Utility ("Butler", "Butler Electric", "Petitioner") is a municipal utility in the County of Morris, State of New Jersey, which is owned and operated by the Borough of Butler and which serves industrial, commercial and residential customers in the Borough of Butler, Boroughs of Bloomingdale and Kinnelon and which partially services the Township of West Milford and the Borough of Riverdale.

On February 3, 2005, Butler Electric filed a petition under Docket No. ER05020116 requesting approval to (1) adjust its Levelized Energy Adjustment Clause ("LEAC") rate from \$0.0509054 per kWh to \$0.059421 per kWh to be effective for services rendered on and after April 1, 2005; (2) continue the cap level of \$0.080187 per kWh on the quarterly LEAC adjustment; and (3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated April 23, 1987, in Docket No. ER8604-390, OAL Docket No. PUC 3596-86.

In June 2005, Butler Electric filed a revised quarterly LEAC rate of \$0.059726 per kWh for the period July 1, 2005 to September 30, 2005. In September 2005, the Petitioner filed a further revised quarterly LEAC rate of \$0.059971 per kWh for usage effective October 1, 2005 to December 31, 2005. In January 2006, the Petitioner filed a further revised quarterly LEAC rate of \$0.061046 for usage effective January 1, 2006 to March 31, 2006. All these revised rates were below the Board approved rate cap of \$0.080187 per kWh.

On July 12, 2005, the Petition was transferred to the Office of Administrative Law ("OAL") as a contested case to be heard by the Honorable Diane C. Sukovich, Administrative Law Judge ("ALJ"). Public notice of the LEAC adjustment was issued to the municipality on February 3,

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<sup>1</sup> Commissioner Christine V. Bator recused herself pending the resolution of questions related to a potential conflict of interest.

2005.

In addition to Butler Electric, the Division of the Ratepayer Advocate ("RPA" or "Ratepayer Advocate"), and Board Staff ("Staff") were parties to this proceeding. The RPA and Staff propounded discovery requests on the Petitioner. Petitioner's responses were received and reviewed by the Ratepayer Advocate and Staff. After extensive settlement negotiations among Butler Electric, the RPA and Staff, on December 16, 2005, the parties executed a Stipulation of Settlement.

### INITIAL DECISION

On January 11, 2006, ALJ Diane Sukovich issued her Initial Decision in the proceeding. ALJ Sukovich found that the signatory parties to the Stipulation voluntarily agreed to a settlement in this matter and that the settlement fully disposes of all issues in controversy and is consistent with the law and in the public interest. No exceptions or reply exceptions were filed.

Upon transmittal of the case back to the Board of Public Utilities ("BPU") from the OAL, the parties discovered that, due to a procedural oversight, a public hearing had not been held. A Legal Specialist was designated to preside over a public hearing in this matter, which was held on February 21, 2006 at the Borough of Butler Municipal Building. No members of the public appeared.

### STIPULATION

The Stipulation provides for the following:

The Parties agree that Butler Electric's request for a LEAC rate of \$0.059421 per kWh for usage effective April 1, 2005 to March 31, 2006 is reasonable as well as each quarterly adjustment subsequently made through December 31, 2005. Specifically, the parties agree that Butler Electric's quarterly adjustments for a LEAC rate of \$0.059726 per kWh for usage effective July 1, 2005 to September 30, 2005; and a LEAC rate of \$0.059771 per kWh for usage effective October 1, 2005 to December 31, 2005 are reasonable.

Pursuant to Board Order Approving Stipulation, Docket No. ER01010076, dated April 27, 2001, Butler Electric is authorized to continue to implement a LEAC rate as authorized by Board Order, Docket No. ER8406-390, OAL Docket No. PUC 3596-86, dated April 23, 1987. With respect to the annual LEAC rate, the Parties agree as follows:

- a. Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the annual LEAC period.
- b. Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve-month period.
- c. Interest on over-recoveries shall continue to be computed on an annual basis at the prevailing monthly New Jersey Cash Management Fund Interest Rate. Accrued interest from the previous LEAC year will be reflected in each annual filing.

- d. Unless otherwise altered by the Board, Butler Electric shall have an annual LEAC proceeding that shall be filed February 1 of each year, to be effective as of April 1 of the same year.
- e. Butler Electric's LEAC rate cap of \$0.080187 per kWh applicable to the quarterly LEAC adjustment filing, established by Board Order dated June 10, 2004 in Docket Nos. ER03010049 and ER03010063<sup>2</sup> shall continue to be in effect. Butler Electric shall continue to provide financial reports and data to Board Staff and the Ratepayer Advocate to support each quarterly LEAC adjustment at least fifteen (15) days prior to the effective date of the requested adjustment.
- f.) Butler Electric's LEAC costs will remain subject to audit by the Board. This stipulation shall not preclude or prohibit the Board from taking any actions deemed appropriate as a result of any such audit.
- g. In future LEAC petitions, Butler Electric will base its line loss adjustment on the lower of: the most recent eleven month average, the most recent twelve month average, or the average over the past five years. For this case the Parties agree to calculate the line loss as stated above. The Parties, however, reserve their rights to review line loss adjustment calculations in future LEAC proceedings.
- h.) The Parties agree that Butler Electric will provide documentation in subsequent LEAC filings that support any new power supply contracts into which it enters, as well as documentation detailing the process by which such power supply contracts have been awarded. The power supply contract documentation is to be supplied as part of the quarterly report covering the period of January through March of the current LEAC year filed on or about December 15<sup>th</sup> each year, so it will be available for review in the annual filing made by Butler Electric on February 1 of each year. This documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible.

## DISCUSSION AND FINDINGS

The Board, having reviewed the attached Stipulation signed by Butler Electric, the Ratepayer Advocate, and Staff, is satisfied that the Settlement represents a fair and reasonable resolution of the issues and is in the public interest. Accordingly, the Board HEREBY ADOPTS the attached Stipulation and ALJ Sukovich's Initial Decision as its own as if it were set forth at length herein. Therefore, the Board HEREBY APPROVES the LEAC rate of \$0.059421 per kWh for services rendered after April 1, 2005. As a result of the Stipulation and quarterly adjustments implemented in July 2005 and October 2005 a typical residential customer consuming 500 kWh in a month will have seen an average monthly increase of \$0.53 or 1.03% compared to January 2005 rates. Further, the Petitioner is authorized to continue its quarterly LEAC mechanism as established by Board Order dated April 23, 1987 in Docket No. ER8604390 subject to the cap of \$0.080187.

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<sup>2</sup> In the Matter of the Petition of the Borough of Butler Electric Utility to Increase its Base Rate and Revise its Tariff, BPU Docket No. ER03010049 AND In the Matter of the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause ("LEAC") for April 1, 2003 to March 31, 2004, BPU Docket No. ER03010063

The Board FURTHER ORDERS that, in accordance with N.J.S.A. 48:2-32.4, Butler shall hold a public hearing by April of every year in which it intends to increase LEAC rates. Additionally, when making its annual LEAC filing, should the filing seek to increase the LEAC rate, Butler is HEREBY DIRECTED to file a public notice as part of the filing as well as a schedule for publication and public hearing consistent with N.J.S.A. 48:2-32.4.

Butler's LEAC costs remain subject to audit by the Board, and approval of the Stipulation shall not preclude nor prohibit the Board from taking any actions deemed appropriate as a result of any such audit.

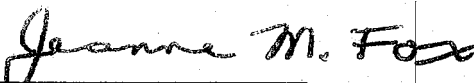
Subsequent to the Stipulation and Initial Decision, Butler Electric filed a quarterly adjustment to its LEAC rate of \$0.061046 per kWh for usage effective January 1, 2006 to March 31, 2006 in accordance with the quarterly LEAC mechanism. As a result of this quarterly adjustment, a typical residential customer consuming 500 kWh in a month will have seen an average monthly increase of \$1.09 or 2.15% over January 2005 approved rates.

The Board HEREBY DIRECTS the Borough of Butler to file final tariff sheets reflecting the rates which conform to the terms and conditions of this Order within ten (10) days from the date of this Order.

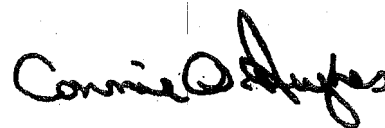
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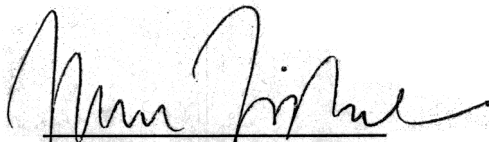
3/3/06

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

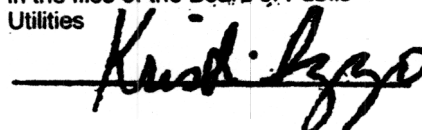
  
CONNIE O. HUGHES  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities





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CMS  
BESLOW  
RPA  
SLUTZKY, J  
WALLENSTEIN, H  
STERN, A  
ENERGY ②

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. PUC 7904-05

AGENCY DKT. NO. ERO5020116

**I/M/O THE APPLICATION OF THE BOROUGH  
OF BUTLER ELECTRIC UTILITY FOR AN  
ORDER APPROVING A LEVELIZED ENERGY  
ADJUSTMENT CLAUSE FOR APRIL 1, 2005 TO  
MARCH 31, 2006**

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**Martin Murphy**, Esq., for the Borough of Butler Electric Utility, petitioner  
(Johnson, Murphy, Hubner, McKeon, Wubbenhors & Appelt, attorneys)

**Henry M. Ogden**, Assistant Deputy Ratepayer Advocate, for the Division of the  
Ratepayer Advocate, intervenor (Seema Singh, Director, attorney)

**Suzana Loncar**, Deputy Attorney General, and **Jeff Slutzky**, Deputy Attorney  
General, for the Staff of the Board of Public Utilities (Peter C. Harvey, Attorney  
General of New Jersey, attorney)

Record Closed: January 5, 2003

Decided: January 11, 2006

**BEFORE: DIANA C. SUKOVICH, ALJ:**

On February 3, 2005, petitioner filed a petition with the Board of Public Utilities  
(BPU) for approval of a Levelized Energy Adjustment Clause (LEAC) for the period April

1, 2005 to March 31, 2005. Petitioner served notices of the proposal on the Clerks of the municipalities affected. In June and September 2005, petitioner filed revised quarterly LEAC rates. In the interim, the BPU transmitted the matter to the Office of Administrative Law on July 21, 2005 for determination as a contested case pursuant to *N.J.S.A. 52:14F-1 to -13*.

A telephone conference was conducted on October 6, 2005. The parties conferred throughout the proceedings and reached a resolution of the matter. An executed Stipulation of Settlement was filed on January 5, 2006, on which date the record was closed. Attached herewith is a copy of the Stipulation.

Having reviewed the record and the settlement terms, **FIND** that the parties have voluntarily agreed to the settlement as evidenced by their signatures, or the signatures of their representatives, and the settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of *N.J.A.C. 17:27-19.1* and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the terms of the settlement and that the proceedings in this matter be concluded

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10

DATE July 11, 2006

Diana C. Sukovich  
DIANA C. SUKOVICH, ALJ

Receipt Acknowledged:

DATE \_\_\_\_\_

[Signature]  
BOARD OF PUBLIC UTILITIES

Mailed to Parties:

DATE \_\_\_\_\_  
lrs

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

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In the Matter of the Application of the	:	BPU Docket No. ER05020116
Borough of Butler Electric Utility for an	:	OAL Docket No.
Order Approving a Levelized Energy		
Adjustment Clause (LEAC) for April 1, 2005		
to March 31, 2006		Stipulation of Settlement

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TO THE HONORABLE BOARD OF PUBLIC UTILITIES AND  
THE OFFICE OF ADMINISTRATIVE LAW:

This Stipulation of Settlement of the Levelized Energy Adjustment Clause (the "Stipulation") is hereby made and executed by and among the Petitioner, the Borough of Butler Electric Utility ("Petitioner" or "Butler Electric"), the Staff of the Board of Public Utilities ("Staff") and the Division of the Ratepayer Advocate (the "Ratepayer Advocate") (collectively, the "Parties"), in settlement of all factual and legal issues pertaining to Butler Electric in connection with the above-captioned proceeding.

The Parties do hereby join in recommending that the Administrative Law Judge issue an Initial Decision approving this Stipulation, and the Board issue a Final Decision and Order approving the terms hereof, based upon the following:

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with the New Jersey Board of Public Utilities ("Board") a Verified Petition for approval of a Levelized Energy Adjustment Clause ("LEAC") for the period April 1, 2005 to March 31, 2006 under BPU Docket No. ER05020116. Specifically, Butler Electric filed a petition requesting approval to: (1) adjust the LEAC rate from \$0.059054 per kWh to \$0.059421 per kWh to be effective for services rendered on and after April 1, 2005; (2) continue the cap level of \$.080187 per kWh on the quarterly LEAC adjustment; and (3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated April 23, 1987, in Docket No. ER8604-390, OAL Docket No. PUC 3596-86.

In June 2005, Butler Electric filed a revised quarterly LEAC rate of \$0.059726 per kWh for the period July , 2005 to September 30, 2005. In September 2005, Butler Electric filed a further revised quarterly LEAC rate of \$0.059771. These revised rates were below the Board-approved rate cap of \$0.080187.

2. In addition to Butler Electric, the Ratepayer Advocate and Staff were parties to this proceeding. The Ratepayer Advocate and Staff propounded discovery requests on the Petitioner. Petitioner's responses were received and reviewed by the Ratepayer Advocate and Staff.

3. Based upon Staff's and the Ratepayer Advocate's review and after settlement negotiations among Butler Electric, Staff and the Ratepayer Advocate, the Parties have agreed upon the following terms of settlement regarding these matters

(a) The Parties agree that Butler Electric's request for a LEAC rate of \$0.059421 per kwh for usage effective April 1, 2005 to March 31, 2006 is reasonable as well as each quarterly

adjustment subsequently made through December 31, 2005. Specifically, the Parties agree that Butler Electric's quarterly adjustments for a LEAC rate of \$0.059726 for usage effective July 2005 to September 30, 2005; and a LEAC rate of \$0.059771 for usage effective October 1, 2005 to December 31, 2005 are reasonable.

(b) Pursuant to Board Order Approving Stipulation, Docket No.

ER01010076, dated April 27, 2001, Butler Electric is authorized to continue to implement a LEAC rate as authorized by Board Order, Docket No. ER8406390, OAL Docket No. PUC 3596-86, dated April 23, 1987. With respect to the annual LEAC rate, the Parties agree as follows:

Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the annual LEAC period

2. Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve-month period;
3. Interest on over-recoveries shall continue to be computed on an annual basis at the prevailing monthly New Jersey Cash Management Fund Interest Rate. Accrued interest from the previous LEAC year will be reflected in each annual filing;
4. Unless otherwise altered by the Board, Butler Electric shall have an annual LEAC proceeding that shall be filed February 1 of each year, to be effective as of April 1 of the same year.
5. The Petitioner's LEAC rate cap of \$0.080187 per kWh applicable to the quarterly LEAC adjustment filing, established

by Board Order dated June 10, 2004 in Docket No. ER03010049 and ER03010063<sup>1</sup> shall continue to be in effect. Butler Electric shall continue to provide financial reports and data to Board Staff and the Ratepayer Advocate to support each quarterly LEAC adjustment filing at least fifteen (15) days prior to the effective date of the proposed adjustment.

6. Butler Electric's LEAC costs will remain subject to audit by the Board. This stipulation shall not preclude or prohibit the Board from taking any actions deemed appropriate as a result of any such audit.
7. In future annual LEAC petitions, Butler Electric will base its line loss adjustment on the lower of: the most recent eleven month average, the most recent twelve month average, or the average over the past five years. For this case the Parties agree to calculate line loss as stated above. The Parties, however, reserve their rights to review line loss adjustment calculations in future LEAC proceedings.
8. The Parties agree that Butler Electric will provide documentation in subsequent LEAC filings that support any new power supply contracts into which it enters, as well as documentation detailing the process by which such power supply contracts have been awarded. The power supply

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<sup>1</sup> In the Matter of the Petition of the Borough of Butler Electric Utility to Increase its Base Rates and Revise its Tariff, BPU Docket No. ER03010049 AND In the Matter of the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause ("LEAC") for April 1, 2004 to March 31, 2004, BPU Docket No. ER03010063.

contract documentation is to be supplied as part of the quarterly report covering the period of January through March of the current LEAC year filed on or about December 15<sup>th</sup> each year, so it will be available for review in the annual filing made by Butler Electric on February 1 of each year. This documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible

4. Entirety of Stipulation The Parties agree that this Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right, upon written notice to be provided to all other Parties within ten (10) days after receipt of any such adverse decision, to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in its Order in this matter, then any Party hereto is free, upon the timely provision of such written notice, to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation has not been signed, and all Parties shall be returned to the position they were in immediately before this stipulation was signed.

5 Binding Effect. The Parties agree that this Stipulation shall be binding on them for all purposes herein.


6. General Reservation. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein:

(a) By executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation.

(b) The contents of this Stipulation shall not in any way be considered, cited or used by any of the undersigned Parties as an indication of any Party's position on any related or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation.

WHEREFORE, the Parties hereto have duly executed and do respectfully submit this Stipulation to Board and request that the Board issue a Final Decision and Order adopting and approving this Stipulation in its entirety in accordance with the terms hereof.

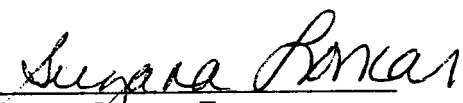
JOHNSON, MURPHY, HUBNER,  
McKEON, WUBBENHORST & APPELT  
ATTORNEYS FOR PETITIONER,  
BOROUGH OF BUTLER ELECTRIC UTILITY

By:   
Martin Murphy, Esq.

SEEMA M. SINGH, ESQ.  
RATEPAYER ADVOCATE

By: \_\_\_\_\_  
Henry M. Ogden, Esq.  
Asst. Deputy Ratepayer Advocate

PETER C. HARVEY,  
ATTORNEY GENERAL OF NEW JERSEY  
ATTORNEY FOR STAFF OF THE  
BOARD OF PUBLIC UTILITIES

By:   
Suzana Koncar, Esq.  
Deputy Attorney General

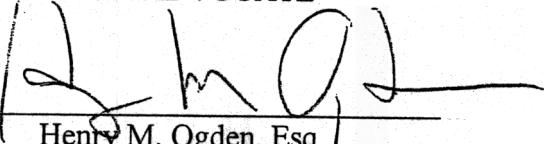
Dated: 2/16/05

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JOHNSON, MURPHY, HUBNER,  
McKEON, WUBBENHORST & APPELT  
ATTORNEYS FOR PETITIONER,  
BOROUGH OF BUTLER ELECTRIC UTILITY

By: \_\_\_\_\_  
Martin Murphy, Esq.

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By:  \_\_\_\_\_  
Henry M. Ogden, Esq.  
Asst. Deputy Ratepayer Advocate

PETER C. HARVEY,  
ATTORNEY GENERAL OF NEW JERSEY  
ATTORNEY FOR STAFF OF THE  
BOARD OF PUBLIC UTILITIES

By: \_\_\_\_\_  
Suzana Loncar, Esq.  
Deputy Attorney General

Dated: 12/



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW  
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Date: JAN 12 2006

Re: Initial Decisions for Receipt

Receipt of the following decisions from the Office of Administrative Law (as well as a copy of this form) is acknowledged as of the date indicated below:

OAL Docket No. PUC

Case Name

7904-05

The Application OF The  
Boord. OF Butler

Board of Public Utilities

2 Gateway Center

Newark, New Jersey 07102

Date: 1

  
Board of Public Utilities



I/M/O APPLICATION OF THE BOROUGH OF BUTLER  
FOR AN ORDER APPROVING A LEVELIZED ENERGY  
ADJUSTMENT CLAUSE (LEAC)  
(APRIL 1, 2004 TO MARCH 31, 2005)  
BPU DOCKET NO.: ER04020094, ER05020116

Kristi Izzo, Board Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Nusha Wyner, Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

George Riepe, Asst. Director  
Division of Energy  
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Dennis Moran, Asst. Director  
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Alice Bator  
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James Brown  
Division of Energy  
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Stacy Peterson  
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Michael McFadden  
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Helene Wallenstein, DAG  
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